

[2565/145]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s) : Hans HAINDL et al.
Serial No. : 10/574,427
Filed : April 3, 2006
For : PORT SYSTEM
Examiner : Bradley Osinski
Art Unit : 3767
Confirmation No. : 7575

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Date: March 18, 2010

Signature: /Erica M. Brauer/

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

S I R:

Applicants request review of the final rejection in the above-captioned application. No amendments are being filed with this Request.

This Request is being filed concurrently with a "Notice of Appeal."

The review is requested for the reasons stated in the attached sheets.

I. Rejection of Claims 34 to 39 and 41 to 50 Under 35 U.S.C. § 103(a)

The Final Office Action contends that the cup ring halves 56a and 56b of Tucker are disclosed as moveable between an alleged first position and the assembled position to thereby clamp a catheter therebetween. However, although Tucker may illustrate the cup ring halves 56a and 56b in phantom lines an exploded view in Figure 6, Tucker plainly discloses that the ring halves 56a and 56b of the access port 40 are ***melted and permanently welded together with the cup shaped element 54*** into which the ring halves 56a and 56b are pressed. Thus, the cup ring halves 56a and 56b of the access port 40 of Tucker are ***neither movable relative to each other nor capable of clamping a catheter therebetween.***

Tucker teaches securing a catheter with a frustoconical structure at an outer end of the outlet tube 60, while Plass et al. teaches fixing a catheter by adhesive action. Thus, it is plainly apparent that ***neither Tucker nor Plass et al. discloses any mechanism capable of fixing a catheter via clamping action.*** Thus the combination of Tucker and Plass et al. clearly fails to disclose, or even suggest, clamping jaws movable to a second position in which the clamping jaws fix the catheter in place between their clamping faces by a clamping action, as recited in the present claims.

Moreover, the arguments presented by the Final Office Action necessarily require: a) placement of a catheter onto the outlet tube 60 prior to assembly of the access port 40; and b) advancing the hypothetical catheter along the outlet tube 60 to the region where the cup ring halves 56a and 56b are located. Notwithstanding the fact that the combination of Tucker and Plass et al. in no way discloses or suggests the feasibility of such a pre-assembly catheter placement, it is readily apparent that there is no clearance between the outlet tube 60 and the cup ring halves 56a and 56b to allow for the hypothetical catheter to be purportedly clamped. Indeed, the hypothetical catheter would prevent proper coupling of the cup ring halves 56a and 56b in the cup shaped element 54, which would prevent assembly of the access port 40. Further still, there would be no apparent mechanism to apply and/or maintain any clamping force between the hypothetically placed cup ring halves 56a and 56b.

As set forth above, the present rejection plainly fails to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

II. Rejections of Claims 40, 51, and 52 Under 35 U.S.C. § 103(a)

Although the Final Office Action sets forth rejections of claims 40, 51, and 52 under 35 U.S.C. § 103(a), these rejections are based, at least in part, on the combination of Tucker and Plass et al. However, neither of the additionally recited references—Dillon et al.

and Felix et al.—overcomes the critical deficiencies of Tucker and Plass et al. as set forth above. As such, the present rejections also plainly fail to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

III. Conclusion

Based on the foregoing, it is plainly apparent that there are clear errors in the rejections as set forth in the Final Office Action dated November 18, 2009.

In view of all of the foregoing, it is respectfully submitted that the present application is in condition for immediate allowance.

While no fee is believed to be required in connection with this paper, the Director is authorized to charge any and all fees that may be required to the deposit account of Kenyon & Kenyon LLP, Deposit Account No. **11-0600**.

Respectfully submitted,

Date: March 18, 2010

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